**THE HON'BLE MS JUSTICE G.ROHINI**

**WRIT PETITION NO : 9281 of 2004**

DATED:28-11-2005

Between:

The Education Committee of Govt. Primary School (Urdu Medium) Swaran, KarimnagarTown rep by its Chairman, Khaja Ghiyasuddin Zakir, S/o. Khaja Moinuddin, aged 45 years,R/o. 3-5-198, near Andhra Bank Branch, Karimnagar

**..... PETITIONER**

AND

1 The District Collector, Karimnagar District.
2 The Superintendent of Police Karimnagar District.
3 The Inspector of Police, Karimnagar Town, Karimnagar District.
4 Neerla Laxmaiah, S/o. Venkataih,
R/o. 3-5-82, Kotla Shankhan, Karimnagar,Karimnagar District.
5 Neerla Ratnamma, W/o. Veeraiah,
R/o. 3-5-83, Kotla Shankhan, Karimnagar,Karimnagar District.
6 Neerla Vijaya, W/o. Yellaiah,
R/o. 3-5-81, Kotla Shankhan, Karimnagar, Karimnagar District.
7 Neerla Anasuya, W/o. Hanmanthu,
R/o. 3-5-77, Kotla Shakhan,Karimnagar, Karimnagar District.

.....RESPONDENT(S)

**THE HONOURABLE MS. JUSTICE G.ROHINI**

**W.P.NO.9281 OF 2004**

**ORDER**:

The writ petition is filed by the Education Committee of Government Primary School (Urdu Medium) Swaran, Karimnagar town, represented by its Chairman Khaja Ghiyasuddin Zakir seeking a declaration that the alleged action of the respondents 2 and 3 ie. the Superintendent of Police, Karimnagar, and the Inspector of Police, Karimnagar Town, in interfering with the construction of building of the Government Primary School (Urdu Medium),Swaran, Karimnagar, is arbitrary and illegal, and for consequential direction to the respondents 2 and 3 not to interfere with the construction of the said building.

In the affidavit filed in support of the writ petition, it is stated that the petitioner is proceeding with the construction of school building as per the instructions of the District Panchayat Officer and in terms of the letter addressed by the Additional Project Coordinator, EPDP, Karimnagar, dated 29-11-2003 under which a sum of Rs.50,000/- was granted by way of instalment for the purpose of construction of the building. It is further pleaded that the first respondent-District Collector having considered the representation of the petitioner committee dated 19-2-2001 informed the Municipal Commissioner, Karimnagar by letter dated 31-5-2003 requesting to give consent for construction of the School building. In pursuance thereof by resolution dated 29.8.2003 , the Municipality resolved to accept the construction of the building as well as the allotment of the land to extent of 0.6 guntas. In pursuance thereof, while construction was in progress, the respondents 4 to 7 filed O.S.No.155 of 2004 in the court of Principal Junior Civil Judge, Karimnagar, seeking perpetual injunction against the petitioner committee. They also filed I.A.No.470 of 2004 for temporary injunction. Though initially the civil court granted temporary injunction on 5-2-2002, on contest by the petitioner committee, the said order of injunction was vacated and I.A.No.470 of 2004 was dismissed by order dated 31-3-2004 and the said order has become final. It is further stated that after dismissal of I.A.No.470 of 2004, the respondents 4 to 7 approached the respondents 2 and 3 and at their instance, the respondents 2 and 3 have been interfering with the possession of the petitioner committee and not allowing them to proceed with the construction of the school building. Hence, this writ petition contending that the action of the respondents 2 and 3 at the instance of the respondents 4 to 7 who could not obtain any order of injunction in the civil suit pending before the Principal Junior Civil Judge, Karimnagar, is arbitrary and illegal.

This court, after hearing the learned counsel for the petitioner committee and having found that the petitioner committee could not produce any material to show that the land in question was allotted to the petitioner committee for the purpose of construction of school building, by order dated 16-6-2004, directed the District Collector to verify and submit a report. Accordingly the District Collector submitted a report dated 8-7-2004 in which it is stated that sofar neither land is allotted to the petitioner's school nor physical possession is handed over to the school authorities. It is also stated that though there was a proposal to allot the land situated adjacent to patta land in Survey No.1448 for the purpose of the construction of school, in view of

the objections raised by the respondents 4 to 7 stating that the said land is actually situated in Survey No.1448, the proposal could not be finalized.

That apart, the respondents 4 to 7 also filed separate counter affidavit.

I have heard the learned counsel for both the parties and perused the material on record. From the report dated 08-07-2004 submitted by the District Collector, it is clear that as on today, there is no order in favour of the petitioner committee allotting the land in question. That apart, admittedly O.S.No.155 of 2004 filed by the respondents 4 to 7 herein is pending and the petitioner committee is also party to the said suit. It is also relevant to note that as per the directions of the Joint Collector, Karimnagar, a joint inspection was conducted by the Assistant Director, Survey & Land Records along with Mandal Revenue Inspector and Mandal Surveyor and the boundaries of Survey No.1448 were demarcated. As per the said inspection report, it appears that the Education Committee encroached 116 square yards of land in Survey No.1448. In pursuance thereof, the Mandal Revenue Officer having conducted the necessary enquiry, passed an order dated 02-06-2004 directing both the parties to maintain status-quo till the disposal of the suit on the file of the court of Principal Junior Civil Judge, Karimnagar.

In the meanwhile, it appears that the Chairman of the Education Committee of the Government Primiary School, Sri Khaja Ghiyasuddin Zakir died on 26-3-2005. In the circumstances, one Mohd. Khadeer Mohiuddin filed W.P.M.P.No.13038 of 2005 claiming that the head master of the Government School vide letter dated 1-4-2005 has appointed him as Chairman of the Education Committee and therefore, he may be permitted to represent the petitioner school and to prosecute the writ petition. However, the respondents 4 to 7 filed a counter affidavit contesting the said petition stating that the said Mohd.Khadeer Mohiuddin is not competent to represent the petitioner school. It is contended that the Head Master of the Government School is not competent to appoint the chairman and therefore, the order of appointment dated 1-4-2005 said to have been issued by the Head Master of the Government School is of no significance and cannot be taken into consideration.

Be that as it may, since admittedly a civil suit is pending to which both the writ petitioner committee as well as respondents 4 to 7 are parties, even assuming that the petitioner is entitled to proceed with the construction in the land in question, the petitioner ought to have sought appropriate directions in the civil court with regard to

the alleged obstruction caused by the respondents 4 to 7. Having regard to the facts and circumstances of the case involving several disputed questions of fact, the petitioner cannot maintain the writ petition under Article 226 of the Constitution of India.

Accordingly, without expressing any opinion on merits, the writ petition is disposed of granting leave and liberty to the petitioner to work out the appropriate remedy. No order as to costs.

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28-11-2005

Stp